

EXHIBIT E

Gregory W. Baxter – March 5, 2020

Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 _____)
4 ANGEL HERNANDEZ,)

5 Plaintiff,)

6 -vs-)

No. 18 CIV. 9035 (JPO) (GWG)

7 THE OFFICE OF THE COMMISSIONER OF)
8 BASEBALL and MAJOR LEAGUE BASEBALL)
9 BLUE, INC.,)

10 Defendants.)
11 _____)

12
13
14
15 VIDEOTAPED DEPOSITION OF GREGORY W. BAXTER

16 Thursday, March 5, 2020

17 New York, New York
18
19
20
21
22
23

24 REPORTED BY:

25 Christina Diaz, CRC, CRR, RMR, CSR, CLR

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1 A. I do not.

2 Q. Do you recall the subject matter of
3 the case?

4 A. No.

5 Q. Do you recall anything about the
6 case that you testified in in 2015?

7 A. At the current time, no.

8 Q. You mentioned you met with
9 Mr. Landen for several hours yesterday. Was
10 anybody else present at the meeting?

11 A. No one else was present. While we
12 were preparing Mr. Murphy arrived precisely
13 the time we finished.

14 MR. MURPHY: New grandson.

15 BY MS. PHILION:

16 Q. And you said you reviewed your
17 expert report and guidance materials on the
18 internet and Dr. Martin's report. Were there
19 any other documents you reviewed in
20 connection with prepping for your deposition
21 today?

22 A. There was one other document.

23 Q. What document is that?

24 A. A memo I had written to myself but
25 never included in the expert report.

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1 Q. What memo was that?

2 A. A memo on the methodology for
3 identifying comments as positive, negative or
4 platitude and the method for identifying
5 whether the author's comments in the year-end
6 reviews were supported or unsupported by the
7 Umpire Evaluation Reports or UERs.

8 Q. When did you first prepare that
9 memo?

10 A. About February 1st.

11 Q. February 1, 2020?

12 A. Yes.

13 Q. When were you retained in this
14 matter?

15 A. I was retained August 26th.

16 Q. August 26, 2019?

17 A. That's right.

18 Q. You did not include that memorandum
19 with your expert report, is that correct?

20 A. My expert report was submitted much
21 earlier, yes, that's right.

22 Q. So why did you create a written
23 memo regarding your methodology after the
24 creation of the report?

25 A. Because I expected to be deposed

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1 about my methodology.

2 Q. How long after the creation of your
3 report did you create this memo?

4 A. February 1st. My -- my report was
5 December 13th.

6 Q. How do you recall the methodology
7 that you utilized for a report in December on
8 February 1st when you wrote the report --
9 when you wrote the memo -- excuse me.

10 A. How did I recall the work that I
11 had done for several months?

12 Q. Yes.

13 A. It was easy to recall the methods
14 that I used because I use them literally
15 hundreds of times in preparing my report. It
16 was merely a matter of writing them all down.

17 Q. When you say you used them
18 "hundreds of times," where else have you used
19 them?

20 A. I used them throughout the
21 preparation of this report, which has
22 hundreds of my comments in it.

23 Q. Have you ever used the
24 methodologies that you used here in another
25 matter?

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1 Mr. Murphy's law firm received Dr. Martin's
2 report. I was paid to read it and comment.

3 Q. The memo regarding your methodology
4 that you mentioned earlier, approximately how
5 long did it take you to prepare that memo?

6 A. Less than two hours.

7 Q. When you prepared that memo, were
8 you referring to any notes that you had
9 created when you were undertaking the
10 analysis that's set forth in your expert
11 report?

12 A. Yes.

13 Q. Do you still have those notes?

14 A. No.

15 Q. Did you discard them?

16 A. Yes.

17 Q. When did you discard them?

18 A. After I prepared the memo that
19 summarized them.

20 Q. Do you have any notes that you took
21 while undertaking your analysis for this
22 report that you did not disregard?

23 A. Yes.

24 Q. What notes do you have?

25 A. I would be speculating. I made a

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1 great number of notes. With my memory, I
2 need to write a lot of notes.

3 Q. You don't have a very good memory?

4 A. I don't think I do.

5 (Baxter Exhibit 1, Curriculum
6 Vitae, two pages, was marked for
7 identification)

8 BY MS. PHILION:

9 Q. Mr. Baxter -- sorry. Dr. Baxter,
10 the court reporter has handed you what we
11 have identified as Baxter Exhibit 1. It is
12 the CV that you provided with your report.
13 Do you recognize it as that?

14 A. I do recognize it.

15 Q. Okay. Is everything on your CV
16 true and correct as of -- we will start with
17 the date of your report -- as of December
18 23rd, I believe you said?

19 A. Yes.

20 Q. Is there anything that needs to be
21 updated on this CV through today?

22 A. No.

23 Q. Looking at your education, where it
24 says "Logistics Executive Development
25 Course," can you explain to me what that is?

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1 that at the time that you were analyzing the
2 documents in preparing your report, is that
3 correct?

4 A. No. I don't recall it now.

5 Q. Did you know it then?

6 A. I might have known then, from
7 discussions about which years I was tasked to
8 analyze, that 2017 and 2018 existed.

9 Q. Did you review every Umpire
10 Evaluation Report for the years 2011 through
11 2016 for each of the umpires, Hernández,
12 Danley and Márquez?

13 A. Yes.

14 Q. Did you keep a list of what you
15 actually reviewed?

16 A. Yes.

17 Q. Did you keep a list by Bates
18 numbers?

19 A. No.

20 Q. How did you keep a list of what you
21 actually reviewed?

22 A. I reviewed everything. You asked
23 me if I reviewed all of the Umpire Evaluation
24 Reports, I did.

25 So it's all of them.

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1 your view, that's Mr. Torre, Mr. Woodfork and
2 Mr. Marsh, no one else?

3 A. Yes.

4 Q. What was your methodology to
5 analyze issues in the creation of umpire
6 performance reviews?

7 A. First to read the depositions of
8 the people who work with the system, the
9 executives of baseball to understand how they
10 say it is done, and then I reviewed the
11 year-end reports of the three minority
12 umpires I was assigned, and then I created a
13 method for comparing for each performance
14 component, such as hustle or four-umpire
15 mechanics, a method to compare the Umpire
16 Evaluations Reports done at the time of a
17 ball game with the performance reviews
18 created months later.

19 Q. Can you describe the method that
20 you created?

21 A. I converted all of the 18-year-end
22 reviews to a Word document so that I could
23 write on it.

24 I converted all of the Umpire
25 Evaluations Reports for those six years to a

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1 Word searchable PDF. I would then put
2 Mr. Hernández' 2011 year-end review on one
3 side of my computer screen and the UE -- the
4 UERs, Umpire Evaluation Reports, for 2011 for
5 Mr. Hernández on the left side of my computer
6 and see if the author of the year-end review
7 had referred to and relied upon what was
8 reported for on-field activity.

9 Q. And how did you determine whether
10 the performance evaluator referred to and
11 relied upon data contained in the UER?

12 MR. MURPHY: Objection. Vague.
13 You can answer.

14 A. I determined it by looking for
15 whether the thing that the author said was
16 true and reflective of the umpire's
17 performance actually ever happened.

18 BY MS. PHILION:

19 Q. Well, how did you make that -- how
20 did you make that evaluation? Were you
21 searching for similar words?

22 A. That was a small part of it. A
23 principal example -- how would I know? The
24 year-end review might include the phrase
25 "Many comments about your hustle say that you

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1 remains a great umpire"; there were many such
2 comments, and I searched for those phrases.

3 Q. How did you come up with a list of
4 the phrases that you searched for?

5 A. I started with a sample of UERs. I
6 looked at the kind of things that umpires
7 were saying under "hustle," under
8 "four-umpire mechanics." And I compiled a
9 list of words to look for to identify whether
10 a comment was positive or negative. And I
11 consistently used that listing and then
12 looked for whether the words that appear in
13 the UER ever appeared under that performance
14 component on the year-end review.

15 Q. If the same word did not appear in
16 both of those documents, did you consider
17 that to be unsupported? So if a word
18 appeared in the performance evaluation like
19 "good" and good --

20 A. Hold on.

21 Q. Yes. Sure.

22 A. What performance evaluation?

23 Q. A year-end performance evaluation.

24 A. Thank you.

25 Q. So if the word "good" appeared in a

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1 year-end performance evaluation, did you come
2 up with a list of words that were similar to
3 "good" that you searched UERs for?

4 A. The list I just gave you.

5 Q. Is -- was that a complete list?

6 A. No.

7 Q. Do you have the complete list
8 written down anywhere?

9 A. Yes.

10 Q. Is that in the memo that you
11 described to me earlier?

12 A. Yes.

13 Q. At the time that you were
14 undertaking this analysis, before you wrote
15 the memo, did you keep a list of these terms?

16 A. Yes, I did.

17 Q. Okay. Did you keep a complete list
18 of the terms that you searched for?

19 A. No. Because --

20 MR. MURPHY: Did you hear the
21 question?

22 THE WITNESS: I did.

23 BY MS. PHILION:

24 Q. Tell me why you didn't keep a
25 complete list of the terms you searched for.

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1 "Bob had a really good day at 2-B." Well,
2 "really good" is common knowledge but 2-B
3 means second base. I suggest not everybody
4 knows that.

5 Q. Were you searching the UERs for
6 that specific sports jargon, or were you
7 searching the UERs for words like "good,
8 great, terrific, energetic, crisp, clear,
9 emphatic"; some of the words that you
10 mentioned earlier.

11 MR. MURPHY: Objection.

12 BY MS. PHILION:

13 Q. You can answer.

14 A. I wasn't very --

15 MR. MURPHY: I will decide that.

16 Thank you.

17 You can answer.

18 MS. PHILION: We are in agreement.

19 A. I wasn't very often searching the
20 UER for the word "terrific." I was searching
21 the UER to read every single comment under
22 that performance component. And then to note
23 whether a UER comment was positive or
24 negative, I used the methodology that I have
25 described. I wasn't searching for

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1 "terrific." I was searching for every single
2 UER comment about four-umpire mechanics, and
3 then base calls and then pace of game, and
4 looking for anything anybody said and then
5 categorizing it as positive or negative.

6 BY MS. PHILION:

7 Q. And you believe you were able to do
8 that based on your thorough review of the
9 Umpire Evaluation Reports, is that correct?

10 A. That is correct.

11 Q. It was not based on any knowledge
12 you had about baseball prior to this
13 engagement?

14 A. That is correct, too.

15 Q. Was there any way that you
16 standardized the process of comparing words
17 from a performance evaluation with all of the
18 Umpire Evaluation Reports?

19 A. Yes.

20 Q. How did you do that?

21 A. First of all, I am not fully
22 trusting of technology, so when I opened the
23 document that I had converted to PDF, that is
24 the Umpire Evaluation Report for that year
25 for that umpire. I first would going to the

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1 employee would take to be neutral. "You had
2 a bad game; you were lazy; you give a bad
3 impression; your performance in this area is
4 deteriorating." It was -- it was not
5 particularly difficult to find the negatives
6 in the negative comments.

7 Q. So your evaluation was based on
8 what in your view was a positive or negative
9 word --

10 MR. MURPHY: Objection.

11 BY MS. PHILION:

12 Q. -- or phrase?

13 MR. MURPHY: Objection.

14 You can answer.

15 A. Yes.

16 BY MS. PHILION:

17 Q. Was this based on any set of formal
18 criteria other than what you have just
19 described?

20 A. No.

21 Q. Have you documented the criteria
22 you used to assess positive and negative
23 comments anywhere?

24 A. Yes.

25 Q. Is that in the memo that you

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1 mentioned earlier?

2 A. Yes.

3 Q. Okay. Did you keep the notes --
4 well, excuse me. Withdrawn.

5 During the process of your analysis
6 in drafting your expert report, did you keep
7 notes on the criteria for positive and
8 negative comments?

9 A. Yes.

10 Q. Do you still have those notes?

11 A. I converted them into the memo.

12 Q. So is that a no?

13 A. That's no.

14 Q. Do you think a different reviewer
15 of the documents you looked at could have a
16 different opinion on whether a comment was
17 positive or negative?

18 MR. MURPHY: Objection.

19 A. I would be speculating.

20 BY MS. PHILION:

21 Q. Do you think it's possible?

22 MR. MURPHY: Objection.

23 BY MS. PHILION:

24 Q. You can answer.

25 A. I think, looking at what I looked

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1 evaluation was what you concluded was word
2 salad?

3 A. What performance evaluation?

4 Q. So in the year-end performance
5 evaluations that you appended to your
6 report --

7 A. (Nodding affirmatively).

8 Q. One of the categories you color
9 coded was called "word salad," is that
10 correct?

11 A. There is.

12 Q. Okay. So what I am trying to
13 understand is how the criteria you set for
14 determining that something in a year-end
15 performance evaluation was "word salad"?

16 A. Actually, I found that to be the
17 easiest of things to categorize. It's any
18 phrase or sentence or paragraph that does not
19 report the on-field -- the performance of
20 that umpire during that season. It is
21 unrelated to a performance review.

22 Q. How did you determine what was
23 unrelated to a performance review with
24 respect to Major League Baseball umpires?

25 A. Any sentence that did not say --

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1 A. Not always.

2 Q. What other methods did you employ?

3 A. Sometimes I did not do a word
4 search for word similarity.

5 Q. How did you determine when you
6 would do a word search for word similarity?

7 A. When the author had stated, "There
8 were multiple comments," and there were none,
9 as in this case. "No UER included a comment
10 under 'hustle and mobility.'" I don't need
11 to search for -- beyond looking at every
12 single -- I looked at all 58 UERs to see if
13 there was a comment under "mobility and
14 hustle." There was not. My comment is true.

15 Q. If there is no comment under
16 "mobility or hustle," did you not do a word
17 search for a document after that?

18 A. I often did.

19 Q. When did you decide to do a word
20 search? That's what I am trying to
21 understand.

22 A. Partway through the project.

23 Q. Partway through this project. So
24 for some of the UERs you -- and performance
25 evaluation comparisons, you did a word search

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1 and for others, you did not?

2 A. Correct.

3 Q. What part of the process did you
4 decide to start undertaking word searches?

5 A. When I found that it was -- when I
6 discovered from reading so many UERs and
7 year-end reviews, that it was quite possible
8 the author might have been getting his claims
9 that -- this particular year, this particular
10 umpire exhibited good mobility from comments
11 that -- from UER comments that didn't appear
12 under "mobility."

13 Q. Did you keep track of which
14 documents you performed word searches on and
15 which documents you did not?

16 A. I performed word searches on every
17 document.

18 Q. Well, you just said you started
19 doing that "partway through the process."

20 A. No. I started searching for
21 phrases similar to the year-end review in the
22 UERs. I word searched every UER for
23 "mobility," and in this case, I searched
24 every UER for the word "physical" and
25 "condition" and "moves" or "move" and

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1 the same questions over and over again.

2 MS. PHILION: All right. We will
3 see when we get there.

4 BY MS. PHILION:

5 Q. All right. So I'm going to read
6 you back the question.

7 What I want to understand is, at
8 some point in the process, you started
9 searching performance components outside of
10 the specific performance component in which
11 you expected to find a comment, is that
12 right?

13 A. Yes.

14 Q. Did you keep track of which Umpire
15 Evaluation Reports you searched the whole
16 document and which you only searched the
17 specific performance component?

18 A. No.

19 Q. Are you familiar with the concept
20 of "wild card searching"?

21 A. Yes.

22 Q. What is it, in your understanding?

23 A. I am not a -- I'm not a computer
24 expert, but my understanding is, using word
25 search technology that includes characters

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1 BY MS. PHILION:

2 Q. I am not asking what it could have
3 been; I am asking what it was.

4 MR. MURPHY: Same objection.

5 BY MS. PHILION:

6 Q. Why did you prepare the memo?

7 MR. MURPHY: Asked and answered.

8 A. Let's say for those two reasons, to
9 help the jury and to be clear in my
10 deposition.

11 BY MS. PHILION:

12 Q. Did counsel request that you
13 prepare that memo?

14 A. He did -- he did not.

15 (Baxter Exhibit 14, Rebuttal Report
16 of Denise Martin, PH.D., dated January
17 27, 2020, 37 pages with attachments, was
18 marked for identification)

19 BY MS. PHILION:

20 Q. Dr. Baxter, the court reporter has
21 just handed you Exhibit 14 for
22 identification. This is the rebuttal report
23 of Denise Martin, Ph.D., dated January 7 --
24 27th, 2020.

25 Is this the report that you told me

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1 from an employee's record is not positive for
2 their career. It is not neutral for their
3 career. It is negative for their career.
4 Without comparison to anyone else.

5 MS. PHILION: Thank you,
6 Dr. Baxter.

7 So I have no further questions, but
8 before we go off the record, we are
9 going to call for the production of the
10 memorandum regarding your methodology
11 that you said you created after you
12 submitted your expert report.

13 We are also going to call for the
14 production of any notes that you took in
15 the process of the analysis in creation
16 of your expert report.

17 We are not closing the deposition
18 and will note that we have requested
19 those documents from your counsel in
20 formal document requests, and they were
21 not provided to us.

22 MR. MURPHY: That is not correct.

23 Are you done?

24 MS. PHILION: Yes.

25 MR. MURPHY: Okay.